

Civil Action No. 5:17-cv-270-MHH
Class Action

1. As this Court has recognized on several occasions, “[i]n Alabama, judicial officers have the exclusive authority to set bond.” *Sexton v. Furr*, Civil Action No. 4:14-cv-02-02165-MHH, 2016 WL 761218 at *2 (N.D. Ala. Feb. 26, 2016) (dismissing Eighth Amendment excessive bail claim against employee of the Alabama Bureau of Investigation) (citing Ala. Code § 12-22-222(b); Ala. R. Crim. P. 72.); *see also Bey v. Adams*, Civil Action No. 7:14-cv-02205-RDP, 2015 WL 389908 at *11 (N.D. Ala. June 22, 2015) (“In Alabama, the exclusive authority to set bail is vested with judicial

officers.”); *Ex parte State ex rel. Patterson*, 268 Ala. 524, 528, 108 So. 2d 448, 451 (1958) (It is “clear that the power to decide whether a defendant is entitled to remain at large on bail is a judicial power.”)

2. Because Sheriff Gentry does not have any authority over setting the terms and conditions of release for persons arrested, Plaintiffs cannot establish either causation or redressability, both of which are necessary for them to maintain standing in this action. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-62 (1992).

3. There is also not the requisite connection between the policies and practices used in setting bail in Cullman County and Sheriff Gentry as required by *Ex parte Young*, 209 U.S. 123 (1908) and its progeny.

4. In the alternative, Plaintiff cannot state a claim against Sheriff Gentry pursuant to 42 U.S.C. § 1983. *See, e.g., ODonnell v. Harris County, Texas*, No. 17-20333, ___F.3d___, 2018 WL 851776 at *4 (Feb. 14, 2018).

WHEREFORE, THESE PREMISES CONSIDERED, Matt Gentry, in his official capacity as Sheriff of Cullman County, Alabama, hereby respectfully requests that this Court dismiss all claims against him either pursuant to Rule 12(b)(1) or the Federal Rules of Civil Procedure or with prejudice pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Respectfully submitted this the 28th day of March, 2018.

s/Jamie H. Kidd

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CERTIFICATE OF SERVICE

I hereby certify that on this the 28th day of March, 2018, I have electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notice to the following:

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